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AUG 06 2014

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

Petition of:)
)
H3 COMMUNICATIONS, LLC) CSR- _____ -N
)
Indianola, MS)
Greenville, MS)
)
For Waiver of Sections 76.92(f))
And 76.106(a) of the Commission's)
Rules)

To: The Secretary
Attn: Chief, Video Services Division

PETITION FOR SPECIAL RELIEF

H3 Communications, LLC ("H3"), licensee of Station WXVT, Facility ID 25236, Greenville, Mississippi, by its attorney, and pursuant to Section 76.7(a)(1) of the Commission's rules hereby petitions the Commission to grant a waiver of the significantly viewed exception to the network non-duplication provisions set forth in Section 76.92(f) and the syndicated exclusivity provisions set forth in Section 76.106(a) of the Commission's rules. Specifically, H3 requests permission to exercise its network non-duplication and syndicated exclusivity rights against Station WJTV, Facility ID 48667, Jackson, Mississippi, in the cable communities of Indianola and Greenville, Mississippi. The Commission's list of registered cable communities indicates that the communities of Indianola and Greenville, Mississippi, are currently served by Cebridge Acquisition, L.P., d.b.a. Suddenlink.

Although the Commission currently considers WJTV significantly viewed in the Mississippi counties of Sunflower and Washington, the data submitted and discussed herein demonstrates that WJTV is no longer significantly viewed in the communities of Indianola and Greenville, Mississippi. Station WJTV no longer meets the Commission's minimum viewing standards as set forth in Section 76.5(i)(1) of the Commission's rules. Therefore, the Commission has authority to grant H3's Petition and to waive the significantly viewed exception with respect to Station WJTV so that H3 may exercise its non-duplication and syndicated exclusivity rights in the communities of Indianola and Greenville, Mississippi.

I.

Introduction

Station WXVT is an affiliate of the CBS Network and is licensed to the community of Greenville, Mississippi, which is in the Greenwood - Greenville, Mississippi, Designated Market Area ("DMA"). H3 has acquired network programming and syndicated exclusivity rights by contract with CBS and a number of syndicators. See Declaration of Christopher Harker ("Harker Declaration") (attached as Exhibit 1). WJTV is licensed to the community of Jackson, Mississippi, which is in the Jackson, Mississippi DMA. The communities of Indianola and Greenville, Mississippi are located in the Greenwood - Greenville, DMA.

Section 76.93 provides that licensees are generally

entitled, pursuant to Section 76.92, to exercise network nonduplication rights acquired by contract.¹ Section 76.92, in turn, generally provides that cable systems serving cable communities located in a station's geographic zone of protection are required to "black out" duplicative network programming.² Likewise, Section 76.103(a) of the Commission's rules permits licensees to exercise contractually acquired syndicated exclusivity rights within their geographic zone of protection.³ Section 76.101 generally provides that cable systems located within the geographic zone of protection of a television station may not carry syndicated programming that duplicates syndicated programming of a station with exclusivity rights within that community.⁴

However, the significantly viewed exception permits otherwise "distant" television stations with duplicative network and/or syndicated programming to be carried on cable systems within a station's protected zone if certain criteria are met.⁵ To be considered significantly viewed in a particular community, and take advantage of the exception, a station must have been included on the Commission's 1972 county-based list or

1 See *Id.* § 76.93.

2 See *id.* § 76.92.

3 See *id.* § 76.103(a).

4 See *id.* § 76.101.

5 See *id.* §§ 76.92(f) and 76.106(a).

demonstrate that it meets certain minimum viewing standards.⁶ A network station is "significantly viewed" under the Commission's rules if it meets the following viewing standards:

For a full or partial network station—a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent;

47 C.F.R. § 76.5(i). The Commission may waive significantly viewed status if a petitioner demonstrates that a station once considered significantly viewed no longer meets these minimum viewing requirements.⁷ According to the FCC's original 1972 designation, WJTV currently is considered significantly viewed in Sunflower and Washington Counties.⁸

II.

Independent Viewing Study

A. Viewing Measurements

The Commission determined in *KCST-TV* that waivers of the significantly viewed exception may be granted if a petitioner can show that, in each of two consecutive years, a station no longer meets the threshold significantly viewed requirements in a cable

6 See Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Systems. Memorandum Opinion & Order on Reconsideration of the Cable Television Report & Order, 36 FCC 2d 326. App. B (1972) (county-based list) [hereinafter "1972 Order"]; 47 C.F.R. § 76.5(i) (minimum viewing standards).

7 See e.g., *KCST-TV, Inc.*, Memorandum Opinion & Order, 103 FCC 2d 407 (1986) [hereinafter "*KCST-TV*"] (network nonduplication); *KSBW, Inc.*, Memorandum Opinion & Order, 13 FCC Rcd 15470 (1998) (syndicated exclusivity).

8 See 1972 Order, App. D. at 58.

community or communities.⁹ In the context of a petition for waiver of significantly viewed status, a petitioner must show that a full network station¹⁰ fails to achieve over-the-air either a minimum of 3 percent total weekly viewing hours (also known as "share") or a minimum of 25 percent net weekly circulation (also known as "cume") in each of two consecutive years.¹¹

A petition for waiver must be accompanied by an independent audience study and must be based on community-specific or system-specific data, to one standard error.¹² Further, the study must cover at least two weekly periods separated by at least thirty (30) days, not more than one of which may be a week between April and September.¹³ If surveys are taken for more than two weekly periods in any 12 months, then they must result in an average figure that, combined with one standard error, is less than one of the viewing thresholds noted above (i.e., share of 3 percent or cume of 25 percent).¹⁴

9 See *KCST-TV*, 103 FCC 2d at ¶ 11.

10 As an CBS Network affiliate, WJTV is a "full network station" as defined by Section 76.5(j) of the Commission's rules. See *Sainte Partners, II, LP*, Memorandum Opinion & Order, 21 FCC Rcd 3466, 3470 n. 11 (2006).

11 See 47 C.F.R. § 76.5(i)(1); see, e.g., *Barrington Bay City License LLC*, Memorandum Opinion & Order, DA 08-2294, 2008 WL 4693156, ¶¶ 3-4 (2008).

12 See, e.g., *KCST-TV*, 103 FCC 2d at ¶ 11.

13 See 47 C.F.R. § 76.54(b); see also *Virginia Broadcasting Corp.*, Order on Reconsideration, 22 FCC Rcd 18109, 18110-11 (2007).

14 See 47 C.F.R. § 76.54(b); see also *Virginia Broadcasting Corp.*, Order on

The Commission has long permitted petitioners seeking waiver of the significantly viewed exception to submit special tabulations of previously collected Nielsen Media Research ("Nielsen") sweeps data in order to demonstrate that a television station no longer meets the threshold viewership requirements. See, e.g., *KCST-TV*, 103 FCC 2d 407 (1986); *Barrington Bay City License LLC*, Memorandum Opinion & Order, DA 08-2294, 2008 WL 4693156 (2008).

As required by Section 76.54(c) of the Commission's rules, H3 sent letters via certified mail, return receipt requested, notifying all relevant entities thirty days before purchasing the WJTV study (the "Notice").¹⁵ See Harker Declaration. H3 timely commissioned the special tabulation of sweeps data from Nielsen based on parameters established by Commission rules and precedent. H3 requested that Nielsen tabulate over-the-air diaries obtained during four week sweeps periods in February 2012 and November 2012 (collectively, "Year 1") and February 2013 and November 2013 (collectively, "Year 2") for zip codes in the community of Indianola and Greenville, Mississippi. A detailed description of the study and the sampling and calculation

Reconsideration, 22 FCC Rcd. 18109, 18110-11 & n.24 (2007). A single survey may be conducted for more than one community served by the same cable system, but, in that case, the sample studied must be proportional to the population of the relevant communities. Because the instant study is community-specific and not system-specific, there is no proportionality requirement. See *WTNH Broadcasting, Inc. & K-W TV, Inc.*, Order on Reconsideration, 16 FCC Rcd 16377, 16379 (2001).

15 See *Meredith Corp.*, Memorandum Opinion & Order, 22 FCC Rcd 12932, 12935

methodology are included in the letter and report provided by Nielsen, which are attached as Exhibit 2.

B. Results

The results of Nielsen's study contained in Exhibit 2 demonstrate that Station WJTV failed to achieve the required minimum 3 percent average share of total viewing hours and 25 percent average net weekly circulation for **both** years in both Indianola and Greenville, Mississippi.¹⁶ Moreover, granting H3's request for waiver based on the study and methodology described herein is entirely consistent with Commission precedent.¹⁷

Conclusion

For the foregoing reasons, H3 respectfully requests that the Commission grant its request for waiver of the significantly

(2007).

¹⁶ See, e.g., *Meredith Corp.*, Memorandum Opinion & Order, 22 FCC Rcd 12932, 12936-37 (2007) (granting petitions for waiver where share and cume were both zero for Year 1, February 2005/May 2005, and Year 2, February 2006/May 2006); *Virginia Broadcasting Corp.*, Order on Reconsideration, 22 FCC Rcd 18109, 18114-17 (2007).

¹⁷ See e.g., *WBOC, Inc.*, Memorandum Opinion & Order, DA 09-244 (Feb. 18, 2009); *Tribune Television Co.*, Memorandum Opinion & Order, DA 09-242 (Feb. 18, 2009); *Virginia Broadcasting Corp.*, Order on Reconsideration, 22 FCC Rcd 18109, 18114-17 (2007) (determining sample of two households in each of two years studied is sufficient to demonstrate station is no longer significantly viewed); *Meredith Corp.*, Memorandum Opinion & Order, 22 FCC Rcd 12932, 12936-37 (2007) (granting waiver based on study with two diaries in first year and nine in second year); *WGME Licensee, LLC*, Memorandum Opinion & Order, 21 FCC Rcd 13668, 13671 (2006) (granting waiver based on study with three diaries in first year and two in second year for one community and six diaries in first year and five diaries in second year for second community); *Capitol Broadcasting Company, Inc.*, Memorandum Opinion & Order, 22 FCC Rcd 1418, 1421-22 (2007) (granting waiver based on study showing, with one standard error, 0.94 percent share (average) and 17.86 cume (average) in first year and zero share and cume in second year); *WGFL License Corp.*, Memorandum Opinion & Order, 22 FCC Rcd 1708, 1711-12 (2007) (granting waiver based on study showing variation among share and cume in first and second years).

For the foregoing reasons, H3 respectfully requests that the Commission grant its request for waiver of the significantly viewed exception to the network nonduplication and syndicated exclusivity rules against WJTV in Indianola and Greenville, Mississippi, so that H3 may exercise its network nonduplication and syndicated exclusivity rights these communities.

Respectfully submitted,



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Washington, DC 20007
Tel: 202 625-6241
Email: dtlaw67@starpower.net
Attorney for H3
Communications, LLC

August 1, 2014

EXHIBIT 1

DECLARATION OF CHRISTOPHER HARKER

Christopher Harker declares under penalty of perjury that the following is true and accurate to the best of knowledge and belief:

1. I am President of H3 Communications, LLC ("H3") licensee of Station WXVT, Greenville, Mississippi.

2. On June 12, 2014, I caused notice letters concerning studies of the viewing of Station WJTV, Jackson, Mississippi, to be sent via certified mail, return receipt requested, to all licensees and permittees of television broadcast stations within whose noise limit service contour, as defined in 47 C.F.R. §73.622(e), the cable communities which are the subject of the foregoing Petition for Special Relief are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable communities. A true and correct copy of the Notice and a list of the licensees, permittees and cable companies that were sent a copy of the Notice are attached hereto.

3. I did not receive any objections to the study proposed in the Notice.

4. Station WXVT is the CBS affiliate for the Greenwood-Greenville, MS Designated Market Area. Station WXVT has contractually acquired network non-duplication rights from CBS to the greatest extent permitted by the FCC's rules. H3 is not able to assert its non-duplication rights against Station WJTV in the cable communities that are the subject of the foregoing Petition for Special Relief. Additionally, H3 has contractually acquired syndicated programming from a number of syndicators and is not able to assert its exclusivity provisions of those agreements against WJTV in the cable communities.

7/31/2014

Date

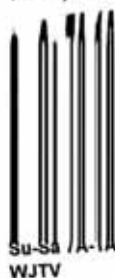
Chris Harker

Christopher Harker,
President, H3 Communications, LLC

EXHIBIT 2



Significant Viewing Study
Greenwood-Greenville, MS
Feb12, Nov12, Feb13 & Nov13



WJTV

Geography Grouping	Results	Feb12 & Nov12 Combined	Feb13 & Nov13 Combined
Greenville, MS (38701 & 38703)	Number of Intabs	10	8
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

Geography Grouping	Results	Feb12 & Nov12 Combined	Feb13 & Nov13 Combined
Indianola, MS (38751)	Number of Intabs	3	4
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00



The attached report provides audience net weekly circulation (cume) and share information among non-cable/non-ADS households for WJTV during the Nielsen Station Index (NSI) survey conducted over four week periods during the February 2012, November 2012, February 2013 and November 2013 measurement periods. The report is based on series of Zip code groups. Households will maintain the reported Nielsen Viewers in Profile (VIP) weights used to project in-tab sample households to universe estimates for their respective measurement periods. This study measures non-cable/non-ADS household viewing between 7AM-1AM, Monday to Sunday.

The sample source for this survey consisted of non-cable/non-ADS TV households returning usable television viewing diaries. NSI procedures were used for distributing diaries and for compiling the estimated audience projections in this report. Average quarter hour projections were computed by summing weights for quarter hours in the daypart for the non-cable/non-ADS in-tab households and dividing by the number of quarter hours in the daypart. The weights which were used for projections are those used to project in-tab sample households to universe estimates in the regular Nielsen Viewers in Profile analysis. Share and cume estimates as well as their respective standard errors are computed for each of the geographies as follows:

Shares of total viewing are computed by dividing average quarter hour M-Su 7AM-1AM projections of a given station for the non-cable/non-ADS in-tab households by the average quarter hour M-Su 7AM-1AM projections in non-cable/non-ADS households across all stations. The associated standard error is calculated using the accepted formula for computing the standard error of a ratio estimate and is shown below:

The average weekly circulation (cume) is an average of the four weeks of the measurement period. The cume was computed by summing the weights for all non-cable/non-ADS households tuning at least one quarter hour to a given station within the cycle during the M-Su 7AM-1AM daypart and dividing by the sum of all non-cable/non-ADS weights within the given measurement period for each week. The cume for each week in the measurement period is then summed and divided by the number of weeks in the measurement period to compute the average weekly cume. The associated standard error for the average weekly cume is calculated using the accepted formula for computing the standard error of a ratio estimate. This standard error is the error of the average weekly cume; it is not an average of the weekly standard error. The formulas used are shown below:

Share

$$Share = \frac{\sum_1^n (w * Qhrs(s))}{\sum_1^n (w * Qhrs(t))}$$

Share Standard Error



$$\text{Std Error} = \sqrt{\frac{n}{n-1} * \sum_1^n \left[\frac{(w * Qhrs(s)) - (\text{Share} * w * Qhrs(t))}{\sum_1^n (w * Qhrs(t))} \right]^2}$$

where n = number of intab households

where w = household weight

where $Qhrs(s)$ = total quarter hours tuned to station of interest by household

where $Qhrs(t)$ = total quarter hours tuned by household

Average Weekly Cume

$$\text{Average Weekly Cume} = \frac{1}{z} * \sum_1^z \left[\frac{\sum_1^n (HH \text{ Weight} * x)}{\sum_1^n HH \text{ Weight}} \right]$$

Average Weekly Cume Standard Error

$$\text{Std Error} = \sqrt{\frac{1}{z^2} \sum_1^z \left[\frac{n}{n-1} * \sum_1^n \left[\frac{(x - \text{Week Cume}) * HH \text{ Weight}}{\sum_1^n HH \text{ Weight}} \right]^2 \right]}$$

where z = number of weeks in analysis (with non-zero intabs)

where n = number of intab households in week

where $x = 0$ if household did not tune station of interest

where $x = 1$ if household did tune station of interest

The attached report is representative of the viewing patterns of the non-cable/non-ADS households of the geographic area surveyed.

CERTIFICATE OF SERVICE

I, David Tillotson, hereby certify that a copy of the foregoing Petition for Special Relief has been sent via first class United States mail, postage pre paid, the 1st day of August, 2014, to:

Cable One of Cleveland
City of Cleveland
100 North Street
Cleveland, MS 38732
Attn: John Lindsey

Cequel III Programming, LLC
DBA Suddenlink Cable
Attn: Steve Oso
340 Main Street
Greenville, MS 38701

Digital Networks SE, LLC
WYPM-LD
100 Martin Luther King Blvd
Suite 402
Chattanooga, TN 37202

Commonwealth Broadcasting Group, Inc.
WABG-TV, WNBD-LD & WFXW-LD
1150 Foothill Road
La Canada, CA 91011

Vicksburg Broadcasting, LLC
WBMS-CA
11077 Swansfield Road
Columbia, MD 21044-2724

WBDB Licensee Subsidiary
2131 Ayrsley Town Blvd
Charlotte, NC 28237

David Ellington
WHCQ-LD, WEBU-LP & WPRQ-LD
P.O. Box 617
Webb, MS 38968

Media General Communications
Holdings, LLC
Station WJTV
333 East Franklin Street
Richmond, VA 23219

WLBT Licensee Subsidiary
Station WLBT
201 Monroe Street
RSA Tower - 20th Floor
Montgomery, AL 36104

Mississippi Authority for Educational TV
WMAQ-TV & WMPN-TV
3825 Ridgewood Road
Jackson, MS 39211

Roberts Broadcast of Jackson MS, LLC
WRBJ
104 North Kingshighway Blvd
Suite 300
St. Louis, MO 63113

Budd Broadcasting Co., Inc.
WUFX
4150 NW 93rd Avenue
Gainesville, FL 32653

DTV America Corporation
W14EH-D, W19EF-D, W22EO-D,
W24EJ-D, W36EV-D, W40DN-D,
W44DR-D, & W47EM-D
1671 NW 144th Terrace, Suite 105
Sunrise, FL 33323

George S. Flinn, Jr.
WWJX
188 South Bellevue
Suite 222
Memphis, TN 38104

DirectTV, Inc.
2230 East Imperial Highway
El Segundo, CA 90245

Dish Network, LLC
Attn: R. Stanton Dodge
9601 South Meridian Blvd

Engelwood, CO 80122
Cebridge Acquisition, L.P.
DBA Suddenlink
Attn: Randy Goad
12444 Powerscourt Drive
St. Louis, MO 63131

Cable One, Inc.
Attn Missy Ryan & Jim Duck
221 S. Sharp Avenue
Cleveland, MS 38732

Suddenlink Communications
Mr. George King
318 Main Street
Greenville, MS 38701

WAPT Hearst Television, Inc.
P.O. Box 1800
Raleigh, NC 27602



David Tillotson

Agency Tracking ID:PGC2553825
Authorization Number:227102
Successful Authorization -- Date Paid: 8/21/14
FILE COPY ONLY!!

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING (1) LOCKBOX #979089	FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE FORM 159 PAGE NO 1 OF 1	APPROVED BY OMB 3060-059 SPECIAL USE FCC USE ONLY
SECTION A - Payer Information		
(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card) h3 communications, llc		(3) TOTAL AMOUNT PAID (dollars and cents) \$1465.00
(4) STREET ADDRESS LINE NO. 1 4606 Charleston Ter NW		
(5) STREET ADDRESS LINE NO. 2		
(6) CITY Washington		(7) STATE DC
		(8) ZIP CODE 20007
(9) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) 202-6256241		(10) COUNTRY CODE (IF NOT IN U.S.A.) US
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(11) PAYER (FRN) 0022382402		(12) FCC USE ONLY
IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)		
(13) APPLICANT NAME H3 Communications, LLC		
(14) STREET ADDRESS LINE NO. 1 4606 Charleston Ter NW		
(15) STREET ADDRESS LINE NO. 2		
(16) CITY Washington		(17) STATE DC
		(18) ZIP CODE 20007
(19) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) 202-6256241		(20) COUNTRY CODE (IF NOT IN U.S.A.) US
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(21) APPLICANT (FRN) 0022382402		(22) FCC USE ONLY
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET		
(23A) FCC Call Sign/Other ID WXVT	(24A) Payment Type Code(PTC) TQC	(25A) Quantity 1
(26A) Fee Due for (PTC) \$1,465.00	(27A) Total Fee \$1465.00	FCC Use Only
(28A) FCC CODE 1 25236	(29A) FCC CODE 2 MS, GREENVILLE	
(23B) FCC Call Sign/Other ID	(24B) Payment Type Code(PTC)	(25B) Quantity
(26B) Fee Due for (PTC)	(27B) Total Fee	FCC Use Only
(28B) FCC CODE 1	(29B) FCC CODE 2	
